

Legal Framework for Corporate Governance: Need for Urgent & Rational Reforms in Conformity with Fundamental Socio-Economic Principles and Reasonable Expectations of a Global Society

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Abstract:

A Legal Framework comprises of 'International' & 'Municipal' Laws (including International Conventions, bilateral/multi-lateral Treaties etc), Customs (followed by a local Community or by a particular Trade) and mutually negotiated Contracts that are enforceable through the 'prescribed' Courts, Tribunals or Arbitrators. And 'prescribed' means specified in the relevant Law itself.

Which Written Code, however, ensures that these Laws are equitable, rational and in conformity with morality -- especially in the sphere of International Laws? None! The outcome of International Treaties & Conventions depends upon the 'bargaining power' of Parties to the Treaty -- in an unlevel playing field. For example, General Agreement on Tariffs & Trade (GATT).

In respect of Municipal (domestic) Laws the written or unwritten Constitutions of certain countries do provide for a challenge to particular Law on ground of equitability; and, in some cases, the local Courts (that are empowered to interpret statutes, including the Constitution itself) have added a ground for challenge to 'unconscionable' Terms of Contract. Yet, we witness an unlevel playing field that forces the brightest students of specific Castes to go abroad for higher/professional studies and merit-based jobs, if their families can afford the initial financial burden to send them out of India. The Nation, in turn, loses the best of its Human Resources! Local unethical practices are also partly responsible for this exodus.

Moreso, Laws of Morality cannot be enforced through a legally prescribed Court, Tribunal or Arbitrator! One such Socio-Cannonical (Moral) Law is the basic framework of 'Trust' in inter-personal relations between/amongst Homo Sapiens. The increasing incidence of rape, inspite of mass public anger and amendments to Laws, is the falling moral values that have eroded the Trust or Expectation that a fellow human being would not outrage the modesty of someone else's mother, wife, daughter or sister. It is common knowledge amongst intellectuals & jurists that many a Laws are irrational and/or full of loopholes; moreso, the implementation of Laws in certain States (countries) is dishonest -- to say the least. In India it is a whispered fact that the most corrupt Organ of the State, today, is the Judiciary -- but none dares to say it openly due to laws on Contempt and Protection (sans Accountability) of Judiciary.

Hence the need for honestly re-visiting our Corporate Laws so that the 40-50 percent of the expenses of running a Company in India (that is taken away by the Government to spend on wasteful consumption or irrational doles, or is pocketed by its officials as bribes) is either re-invested into the Company or is used to lower the prices paid by the Consumers of its products/services, or is gainfully spent on its employees.

Keywords: *Corporate Legal Environment, Reforms in Economic Laws, Honest Implementation of Laws.*

Introduction

Corporations or Companies are created and exist within a legal framework that is largely defined by the politico-legal system of the country in which each Corporate is registered/incorporated and, in case of Multi-National Corporations/Companies operating in more than one country, this legal environment is partly determined by the International Law, partly by the Laws of incorporating country and partly by the Laws of the country in which this Company chooses to operate.

The operational costs and efficiency of Companies are greatly influenced by the aforesaid legal framework, the long-term & short-term policies of local (Federal & State) governments, local political system & institutions, available infrastructure (including power, communications & transport), work-ethos of local human resources, various pressure-groups (including the Media, Trade Unions, Professional Associations, Political Parties and their Regional politics, and Cartels), ethics of local regulatory authorities (including Licensors, Inspectors, Tax-Assessors) and statutory Auditors, and the moral fibre of local Judiciary/arbitrators/adjudicatory-authorities, as also on the technical competence, quality and business ethics of local suppliers.

However, in this Paper, I shall focus only on a part of the *relevant* Legal Framework (including the Law-making machinery, substantive & procedural Laws, Judicial/adjudicatory system and Law-enforcing Authorities), certain policies of Central Government impinging upon businesses (including regulation of business through a Licensing regime, Taxation, Audit, statutory prescription of Conditions of Employment, Laws governing the use of various resources, Laws on Disposal of Waste, etc) and the ethics of Indian Bureaucracy employed in various Regulatory Authorities (including adjudicatory Authorities such as Ombudsmen, Courts & Arbitrators).

Scientific definition of certain Terms on the basis of fundamental Principles of Economics & Logic

It is necessary to scientifically and logically define certain Terms, rather than depend upon the *circular* logic of some of the abstruse Legalese. For example, Section 3 (1) (i) of Companies Act 1956 defines a 'company' as:

“(i) ‘company’ means a *company* formed and registered under this Act or an existing *company* as defined in clause (ii);

(ii) "existing company" means a *company* formed and registered under any of the previous companies laws specified below:- ...”

The above Law per se or ‘palpably on its face’ fails to define the generic term ‘*company*’ and amounts to: “Let all rhinoceros be called rhinoceros since they look like rhinoceros” -- an apparent logical fallacy.

Corporate or Company: Before we can define ‘corporate’, we must define the terms ‘economic activity’, ‘economic entity’, ‘legal entity’, etc.

Legit (Socio-Legally Legitimate) ‘Economic Activity’: the process of transforming resources (labour and other ‘assets’, or any combination of these) into a product or service that is capable of being legally and ethically exchanged in the market place, or enhancing (adding to) the value of such products/services; ‘asset’ herein means anything which possesses ‘economic value’ (i.e. capable of being exchanged for money) and ‘legitimate’ means a Code of Conduct (Code of Best Practices) approved by the Society and having the express or implicit support of Law. I shall presently revert to this last mentioned aspect.

‘Economic or Business Entity’: an individual (or a Group of persons) who engages in a *legit* economic activity in a manner that makes him/her/them accountable for the safe & efficient use of all the inputs

(including themselves) and processes employed in the said activity and, in return, gets ownership rights to the outputs of such activity [this ownership also entails the liability for safe disposal of the 'waste' (residues) and 'by-products' produced by such economic activity]; and also makes him/her/them responsible to support the safe & efficient operation of these outputs over their life-cycle (in case of durable goods) or, if these outputs are one-time-use products (i.e. consumables) then the producer is responsible for, at least, the reasonability of Price & Quality of these consumables. Moreover, it imposes upon such individuals or Groups a responsibility to use these resources and processes in a manner that minimises the adverse effect of such activity upon Global Ecology, local Environment, Human Resources, and the Society at large (it also includes the responsibility to return the *retired* human resources to the Society in a manner that is socially acceptable).

Ownership of Outputs also grants access-rights to the reasonable profits (usually 15%) earned from the exchange of these outputs in the *legit* market-place, and it also occasions losses if either the economic exchange fails or defective outputs are returned for repair or replacement, or if compensation/damages/penalty is imposed by the Regulatory Authorities, or if a part of the resources employed fail to deliver what was contracted for (e.g. due to *strike* by employees, *breach of contract* by sub-contractor, etc). These may be called 'Risks and Benefits of Entrepreneurship' (RBE) and are subject to legal remedies available to the Investors and/or the Company.

Owners (Equity-holders or Assumers of RBE) decide what to do with 100% (including 25% of their own 'seed-money') of the total financial assets (Capital) employed. However, 75% of this Capital is contributed by Stake-holders who are non-Owners -- their funds have been loaned *through* Financial Institutions to the Business Entity, or they have invested their funds directly in the Company by purchasing Debentures, Bonds etc (let us call these Bonds etc 'Secondary Financial Instruments'). And these non-Owners (including Secondary Instrument-holders) also run the risk of losing part/whole of their assets if the 'Company' (a 'legal entity') goes into liquidation due to mismanagement of its Corporate Affairs -- notwithstanding that the professional Managers (CEO etc) and Governors (Directors etc) are appointed by the Owners and, in some cases, by the Regulatory Authorities, not by non-Owners. In Law, Secondary Instrument-holders enjoy only the Right to First-Charge on Company's *available* assets, which may or may not translate into a full recovery of the Assets invested by these Instrument-holders. Equity-holders who possess Shares (let us call these Primary Financial Instruments) run the full Risks and Benefits of Entrepreneurship. What legal mechanism or participation is available to non-Owners to hold these Managers and Governors accountable for good Corporate Governance? **None**, other than a long wait to receive whatever falls their way in a Liquidation Proceedings, or through 'independent' Directors!

A '**legal entity**' is a person or group of persons who may *singly* and/or *jointly* sue or be sued as a Business Entity or as a Public/Regulatory Authority or as a person (either directly or through a prescribed/ designated official or guardian). And a 'Public Limited Company' herein means a business entity that is incorporated under the Companies Act 1956 or 2013 and its Owners can neither sue nor be sued *directly* -- only the Company can sue or be sued *through* its prescribed and designated officials [Supreme Court judgments preclude the Share-holders (Equity-holders) from suing or being sued]. As a corollary, a Public Limited Company¹ is not *agroup of persons* who can sue or be sued either jointly or singly (individually). However, most of the Law Lexicons define a Company as "... or a *group* of persons ..." and the Golden Rule for Interpretation of Statutes enjoins that the first option while interpreting any provision/term of Law which is not defined by the concerned statute, is to refer to its Dictionary-meaning!

Legal Environment of Business impinging upon able Corporate Governance

A Legal Framework comprises of 'International' & 'Municipal' Laws (including International Conventions, bilateral/multi-lateral Treaties etc), Customs (followed by a local Community or by a

particular Trade) and mutually negotiated Contracts that are enforceable through the 'prescribed' Courts, Tribunals or Arbitrators. And 'prescribed' means specified in the relevant Law itself.

Which Written Code, however, ensures that these Laws are equitable, rational and in conformity with morality -- especially in the sphere of International Laws? **None!** The outcome of International Treaties & Conventions depends upon the 'bargaining power' of Parties to the Treaty -- in an *unlevel* playing field. For example, General Agreement on Tariffs & Trade (GATT).

In respect of Municipal (domestic) Laws the written or unwritten Constitutions of certain countries do provide for a challenge to particular Law on ground of 'equality' (equitability); and, in some cases, the local Courts (that are empowered to interpret statutes, including the Constitution itself) have added a ground for challenge to '**unconscionable**' Terms of Contract. Yet, we witness an *unlevel* playing field that *forces* the brightest students of specific Castes to go abroad for higher/professional studies and merit-based jobs, if their families can afford the initial financial burden to send them out of India. The Nation, in turn, loses the best of its Human Resources! Local unethical practices are partly responsible for this exodus (*infra*).

Moreso, Laws of Morality cannot be enforced through a legally prescribed Court, Tribunal or Arbitrator! One such Socio-Cannonical (Moral) Law is the basic framework of 'Trust' in inter-personal relations between/amongst Homo Sapiens. The increasing incidence of rape, inspite of mass public anger and amendments to Laws, is the falling moral values that have eroded the Trust or Expectation that a *fellow* human being would not outrage the modesty of someone else's mother, wife, daughter or sister. This important aspect has been completely overlooked by Government (including its Verma Commission) and the Parliament.

It is common knowledge amongst intellectuals & jurists that many a Laws are *irrational* and/or full of loopholes; moreso, the implementation of Laws in certain States (countries) is dishonest -- to say the least. In India it is a *whispered* fact that the most corrupt Organ of the State, today, is the Judiciary -- but none dares to say it openly due to laws on Contempt and Protection of Judiciary, sans accountability(*infra*).

Why did the Law-makers and/or Central Government fail to safeguard the interests of non-Owners (*supra*) by *preventing* collusive financial scandals (e.g. the one committed by Satyam Computer Services in collusion with their Auditors, namely PricewaterhouseCoopers) in India -- especially when similar Accounting Frauds had already come to light abroad in the case of Enron and WorldCom (*infra*)?

In 2007, a local businessman said to the Author in Jalgaon (Maharashtra) "Only those who wish to follow the prevalent unethical practices should remain in India, and those who find this system abhorrent to their conscience, ought to *emigrate* to better countries" -- little realising that such a psyche will lead to repercussions that are worse than those that were witnessed during the Partition of India in 1947, because the residual population in India would then be such as will have no compunction in regressing into a scenario where the bigger fish eats the smaller ones. In fact, the abysmal Law & Order situation today indicates that we have already regressed into a state in which man is preying upon man -- there were more than 5,000 murders in Uttar Pradesh alone during just one year after the last U.P. State Elections; and one of the under-trial sharpshooters of a large criminal gang nonchalantly told the Author, "Vakil sahib, just as your profession is Vakalat, our '*peshha*' is supari-killing" (Advocate Sir, our profession is contract-killing, just as yours is Advocacy). A *prisoner's statement cannot be used as 'evidence' against him unless it is made by him directly before a Magistrate after the accused has been warned about his right not to incriminate himself*. It is pertinent to mention that acute Law & Order situation is one of the main reasons for the flight of foreign investments from India (*infra*).

What is the economic rationale for levying surcharge (super Tax) on Profit-Making Companies who could have used this money for investment-led economic growth, and transferring it either for

conspicuous consumption (which, unless backed by equivalent investment in production, leads to demand-push inflation) or be doled out to loss-making Companies? For example:

- i) As per Reserve Bank of India (RBI) between Financial Years (FYs) 2000-2001 and 2012-2013 Rs.204.512 crore were written off by Indian Banks as 'bad debts' to Corporates -- out of which only about 18.5% could be recovered, through Liquidation Proceedings etc, by these Banks;
- ii) In the year 2008 Central Government Waived Off Rs.60,000 crore of 'farm loan' under the Debt Relief Scheme -- whereas most of the 'Suicides by Farmers' were committed by 'ryots' (landless farmers who till Zamindars' land on the basis of 'batai') because they were unable to repay loans taken by them from local **moneylenders** [these ryots have no collateral (security deposit) that the Banks demand] and the loans that were waived belonged, most likely, to wealthy and influential farmers who had borrowed from Banks for *ostentatious consumption* (e.g. daughter's marriage etc);
- iii) In February 2010 Central Government approved an injection of \$173m (£110m) for the ailing national carrier Air India; this installment is only a part of an expected \$432m financial aid package for the Company which has reported massive losses in the preceding few years [the airline reported a loss of \$875m in the fiscal year ending in March 2009 (BBC News)];
- iv) More and more States are demanding thousands of crores of Rupees from the Central Government either for drought-relief or flood-relief every year!

Why can't this money be wisely spent in a planned way to **prevent** floods and drought by simply creating storage tanks (Allauddin Khilji, with a much smaller Cabinet of Ministers, did that centuries ago)? More about it later (*infra*).

Business environment in India is also marred by unwarranted political intervention, and sometimes by judicial intervention while entertaining PILs -- not to speak of Strikes (sometimes violent) on the smallest pretext by the Workers. For instance, in Singur (West Bengal) Tata Motors and West Bengal Industrial Development Corporation entered into a lease agreement for 997 acres of land (the then prevailing market rate for the same was Rs.4.5 lakh per acre) for the construction of a factory to manufacture Tata Nano (a small car). This move was opposed by Trinamool Congress (a Regional Political Party) -- when Trinamool Congress came to power in West Bengal, the said lease was scrapped by enacting the Singur Land Rehabilitation and Development Act 2011. The cost to the Company of this reversal in land-allotment is estimated by Tata Motors as between Rs.440 crore and Rs.1,400 crore -- the cost of shifting the plant & machinery itself from Singur to Sanand (Gujarat) is shown in the Company's Annual Report for 2011-12 as Rs.310 crore; and the Company is seeking an overall compensation of around Rs. 1,400 crore from the State Government (Calcutta High Court ultimately struck down the said Act as "unconstitutional and void".)

We are well aware of the violent strike in Manesar (Haryana) in the Maruti Suzuki automobile plant in the year 2012, which led to the killing of its Human Resources Manager by the Workers of the said plant.

Let us recall the police atrocities (including rape, arson and assault) during farmers' stir in Bhatta-Parsaul village -- these farmers were protesting against the dubious land-acquisition by Uttar Pradesh Government (State Government is alleged to have acquired the farmers' land cheap and then sold it a high rate to Builders/Colonisers who, in turn, sold it at a huge profit to those who desired to buy the houses built thereon). Why can we not devise an equitable method for involving Farmers as 'Bhagidars' (participants) in Industrial Development, instead of forcibly dispossessing them from their basic means of livelihood and their only socio-economic status-symbol, i.e. land. An alternative framework is suggested in Appendix-A to this Paper. Incidentally, several suggestions made by the Author herein have been accepted and implemented by Ministries of Defence and Panchayati Raj, Supreme Court, Prime Minister's Office, Parliament, CAT 2009-13, UPA-I & II, Congress Party, Bhartiya Janata Party, etc; even the Lokpal Act 2013 incorporates two of Author's suggestions (e.g. inclusion of NGOs) and it was on the basis of the Principles of Law first enunciated by him, in a published Article, that Supreme

Court brought Ministers within the ambit of Prevention of Corruption Act (more at URL: <http://www.pul-sator.com/AboutMe.htm>); even the payment of financial benefits (subsidy) directly into the Bank Account of beneficiaries (BPL-Families) was a part of the Paper titled 'The Urban Village' which the Author had earlier presented at an International Seminar organised by Jaipuria Institute of Management (Jaipur).

To make matters worse, Businesses have to pay (at different windows) not only more than 30 types of separate Taxes, but have also to meet the unlawful *graft-demands* of as many 'Inspectors'; moreso, the opportunity for demanding and receiving bribes is encouraged by gaping (unplugged) loopholes in Law. For example, under the Factories Act 1948 (read with Delhi Factories Rules 1950) every Industrial Establishment ('factory') must inform the concerned Inspector if any 'Workman' is employed for more than 8 hours per diem or 48 hours per 'week'; and 'overtime' allowance for one hour is to be paid if a Worker is employed for 9 hours on any day. In any case, no Workman can be employed for more than 15 hours (including the permissible 'overtime' of 1 hour) on any single day or for more than 39 hours on any 3 consecutive days or for more than 60 hours in any work-week and such employment shall only be for the purpose of "Urgent Repairs". But there is no provision at all for 'regularisation' of the 'overtime' beyond 9 hours per diem, or if the Inspector subsequently holds that no 'Urgent Repair' was, in fact, involved. Moreso, the Factories Act provides for a maximum punishment of two years and/or a fine up to Rs. one lakh or both in case of breach of the Law (including the maximum permissible hours of work per diem/per week). This loophole leaves only one alternative open for the employer, i.e. to make the Inspector 'look the other way' by greasing his/her palms!

Though India is Asia's 3rd largest economy and is perceived as a potential high-growth market, yet irked by the 'lack of fair play in opportunities' (read *unelevel playing field*) Germany's Fraport -- the world's second-biggest airport operator, recently decided to shut down its development office in India and, thus, it has become the latest in a growing list of Companies **exiting** India.

India is Dell's biggest employee-base outside the United States (27,000 employees) and Amit Midha (its President for Asia Pacific and Japan) told the Reuters, "When a company is trying to leave India and that company is well respected, then clearly it suggests that there is something ... this place is not easy to work". And only such Firms can enter this market as have 'staying power' to go through the *gestation period* that is severely affected by red-tape and corruption (leading to costly delays -- unless one knows how to 'navigate' in these turbulent conditions). Moreso, this market is merely a bubble that can burst at any time -- it is fed by the *nouveau riche* whose main income comes from illegal/unlawful activities [like bribes, black-marketing, fake-currency, ransoms, black-money, cheating (deceiving the gullible or hapless Consumers, Customers, Subscribers & Investors), adulteration, piracy etc] and, hence, such incomes might suddenly disappear through a massive **civil-movement** (civil-wars are not always necessary in Democracies). This market is also partly fed by the higher middle income group whose jobs (like BPOs) may disappear with a mere stroke of pen wielded by the Western powers. Let us recall that the policy of encouraging lower or middle income groups to buy *foreign-made* goods against 'loans' offered by *foreign* Banks (backed by a policy to engage corrupt police and court officials or even goons to 'recover bad loans') misfired, and led to the collapse of many a Banks in Europe and also to Recession/melt-down in 2008.

We should also take a lesson from Intel's recent outburst against frequent power black-outs (e.g. a Grid-failure for two consecutive days in July 2012, which affected more than five States), the highly unstable Government Policies on Taxation (including *retro-taxation*), reversal of legally executed Contracts, and rampant corruption. Coupled with poor law & order situation and extraneously engineered labour-unrests, India becomes a poor choice for foreign Investors.

Hence the need for honestly re-visiting our Corporate Laws so that the 40-50 percent of the expenses of running a Company in India (that is taken away by the Government to spend on *wasteful consumption* or *irrational doles*, or is pocketed by its officials as *bribes*) is either re-invested into the

Company or is used to lower the prices paid by the Consumers of its products/services, or is gainfully spent on its own employees.

Let us now briefly examine the quality of various players that comprise the Legal Environment of a Business in India.

Legislature & Judiciary

We have already observed (*supra*) that the Law enacted by Legislature/Sovereign is not necessarily always rational or logical or scientific; similarly, it is not safe to blindly apply Judge-made Law by a thumb-rule to each & every situation across-the-board, or to treat Indian Judgments as Legal Maxims or the omniscient/correct *ratio decidendi* or even as omnipresent *rights in rem*; nor can we accept judicial findings as the Gospel Truth -- at best, these are mere *precedents* based upon 'judicially determined facts' that one Party has either 'proved' or which have 'gone as proved' (due to the omission on the part of Opposite Party either to counter the alleged facts, or to prove otherwise) and has backed these 'proved' allegations by Legal Arguments which one Party's Lawyer has advanced but the Opposite Party's Counsel has miserably failed to rebut (i.e. for no fault of the losing Party except that the said Litigating Party could not financially afford to engage a better Counsel, or its negligent Counsel was appointed as Amicus Curiae under the Legal Service Authority Act 1987, or its counsel colluded with the opposite counsel, etc). Here is some of the evidence as to why we cannot treat even the Apex Court's *findings* as the Gospel Truth:

In one matter, Supreme Court of India declared a *living* Advocate who was practising in the same very Court, as "dead"; moreover, the said Judgment has not been corrected till date in spite of a written request having been submitted to the Chief Justice of India (CJI) to modify that Judgment/Order. The said Order is available on the Internet at the official website of Supreme Court. For more facts, please contact the Author.

In yet another matter, Supreme Court has -- on the basis of a Law then prevalent in Gujarat, denied payment of Gratuity to all School-Teachers not only in Gujarat but also in India (that is to say, it has vested with School-Managements across India a *right in rem* against ALL Teachers, *notwithstanding* that local State Governments' Policies may be different than those prevalent in Gujarat; moreover, no Notice to Teachers employed in States other than Gujarat, was issued in the said matter) *whereas* Gratuity is being paid to *more highly paid* Teachers of a Deemed University (namely, Indian Law Institute) of which CJI himself is the Chancellor!

Moreover, in a matter filed by some School Teachers of Delhi the Supreme Court declined to limit or restrict the Gujarat Judgment to Gujarat, and also declined to hear the matter because Supreme Court's Registry had destroyed the judicial files of the said Gujarat matter! No effort was made by Supreme Court to reconstruct its records although under Article 129 of Indian Constitution it is a Court-of-Record, and the Circular issued by Delhi Government was also before it -- it is pertinent to mention that the State Government of Delhi supports payment of Gratuity to teachers. The proper procedure is to appoint an Amicus Curiae to *represent* the interests of all those who are not before the Court but are, nevertheless, likely to be affected by the Court's Final Judgment in that matter -- that is to say, whenever any Court's decision is likely to create a *right in rem* which would affect Parties that are not represented before the Court, either a Public Notice ought to be issued by the Court or, at least, an Amicus Curiae must be appointed.

Similarly, is it reasonable to suppose that Indian Law-makers (Parliament) will *always* enact Laws that are rational, scientific, fair, just, reasonable or equitable, or Laws that are in conformity with the Constitutional Objective of a 'socialistic pattern' of Society (implying a *level playing field*) or are comprehensive and include ALL perpetrators of the same 'crime' (e.g. the crime of corruption & nepotism -- whatever be the status of the concerned 'public servant' and to whichever Organ of the State he/she may belong)? Shouldn't the system of obtaining prior 'sanction' to prosecute be abolished by

rationalising the Criminal Procedure Code itself so as to grant Bail on Personal Bond during the investigation stage in all 'Complaint Cases' (non-cognisable), politically motivated allegations, and certain 'economic offences'?

It may be stated at the outset that import into the Indian jurisprudence (justice-delivery-system) 'Common Law' principles, instead of the 'Civil Law' system, goes against the spirit of a *socialistic pattern* of Society -- because Common Law is heavily loaded in favour of those who are in a position to *create* 'evidence' [i.e. able to somehow influence the process of 'proving' *facts-in-issue* (the case of RK Anand, a *designated* 'Senior Advocate' and an MP, is an example)] and also by hiring influential, cunning & shrewd Lawyers who can persuade the adjudicatory Authority (includes Courts, Tribunals, Forums, Commissions, Arbitrators etc) to lean towards their arguments in their Clients' favour.

Supreme Court Legal Services Committee provided Free Legal Aid, including the services of a Senior Counsel, to a lady who had just returned from a personal trip to the United States -- a misplaced grant of 'aid' just because the Law provides Free Legal Assistance to ALL women! Why was the Law kept silent about the beneficiary's financial status?

The Author once attended a private party hosted by a group of about 18 Advocates -- every month each one of them, by turns, footed the bill for the 'sharab' & 'kabab' served at the party that was attended by some Judges as 'guests'. These regular informal mingling with Justices were expected to earn the hosts a few favours in, at least, 'discretionary' matters (whenever a decision solely depends upon the 'satisfaction' of the Judge hearing the matter). Some Associations, presided over by Indian Lawyers, organise Conferences abroad, and invite some Indian Judges for an all-expenses-paid participation therein.

In the presence of the Author, a Senior Counsel (who was an ex-Judge of a High Court) told a Litigant (a Swamy ji) that he would meet, in Chambers, the concerned Supreme Court Judge before the Swamy's matter was called -- this *extreme* step was also included in his paltry professional fees of Rs.5,000. And a woman-of-easy-virtue whose area of operation included various courts, boasted of obtaining favourable Orders from all and sundry.

During an informal chat with a Reader (also called 'Peshkar' in some States) in a District Court, the Author queried as to why the Reader was not afraid to accept bribes in the presence of the Magistrate. The Reader replied, "Sir, when the Magistrate ordered a soft-drink for you in his Chambers, did he pay us for the same? He doesn't pay when he hands us his Laundry Bill or for posting his personal letters by Speed-Post etc; moreso, when the peon carries judicial files at cease-work to Magistrate's house, latter's wife gives him a list of fruits and vegetables to be delivered to the house -- is the peon paid for the same? The Magistrate knows that all these expenses are paid out of bribes that we collect." An Assistant Registrar (whose duty was to prepare a one-page Note for the CJI in those 'Mentioning Matters' wherein immediate interim Relief was prayed but the case-files could not be sent to CJI's house a day-in-advance) was seen by the Author accepting Rs.3000 from an Advocate in a Supreme Court Chamber -- *ostensibly* as 'loan', whereas the Conditions of Service for Supreme Court Employees stipulate that even a bicycle cannot be 'purchased' by any employee from any Advocate without prior approval of CJI.

Will then a Lokpal (usually a retired Judge) be expected to rectify the motivated or wrong decisions that his colleagues had earlier passed as judicial officers? Wasn't the Order passed even by a retired Supreme Court Judge (namely Santosh N Hegde, then Lokayukta in Karnataka) found "bad in law" even by Judges of the High Court of Karnataka in BS Yeddyurappa's matter? What is the best guarantee that a Supreme Court Judge (*retired* or otherwise) would do no wrong (*infra*)?

Is there any Authority in India vested with the power to correct the wrong committed by the Supreme Court itself in a Final Judgment or in an Order on Review-Petition/Curative Petition (the latter are usually decided by Circulation, without any hearing in the open Court and by the same very Judges

who had passed the *impugned* Order -- except that for deciding a Curative Petition 2-3 additional Judges are included so as to form a Coram of 5 Judges)?

In this scenario, can it be said that 'Justice has been *delivered*' or meted out? Should we not just say that the matter has been "finally disposed of" under the existing system? Shouldn't we admit that although there was a *miscarriage of justice* the 'Opportunity to Redress' the said Wrong/Error is being **foreclosed** not by default of the affected Party but due to the implicit fault of judicial system itself? During the British 'Raj' there was, at least, a Privy Council (within the House of Lords) to redress such Miscarriages of Justice.

Although Rule 137 of Rules of Procedure and Conduct of Business in Rajya Sabha (Upper House) provides for 'Public Petitions', yet Rule 138 (iii) (a) fails to include within the scope of such Petitions the aforesaid "disposed of" cases where, despite a palpably evident Miscarriage of Justice, the Opportunity for Redressal has been foreclosed due to systemic error or failure. If the said Rule is modified, we ("We, the People of India") will, at least, get a mechanism to protect ourselves against judicial and bureaucratic atrocities, wrongs, miscarriages, oversights, corruption, nepotism, etc; moreso, the need for a separate 'Lokpal'(involving huge expenses) may not arise. The mass public anger that was witnessed over certain events or actions during the last few years is a consequence of the fact that the common man ('aam adami') today finds himself/herself in a very hapless situation which denies him/her even an opportunity to access an honest Public Authority which would expeditiously redress his/her genuine grievances. Several such aspects of Legal Environment of Business need to be examined in detail.

No Judge is accountable to the Sovereign (i.e. We, the People of India) -- rather, these Judges are protected by Judicial Officers Protection Act 1850 and the Judges (Protection) Act 1985; moreso, these Judges are armed with Draconian Laws to suppress dissenting voices ('Draconian' because the same judge acts as both the Prosecutor and Juror) vide Article 129 of the Constitution of India *read with* Rules to Regulate Proceedings for Contempt of the Supreme Court 1975, and under Article 215 of the Constitution. Under Article 215 (read with Criminal Procedure Code) Contempt of Subordinate Courts is also tried by the concerned High Court (however, a State Commission -- established under the Consumer Protection Act, is not a 'subordinate' court, although it is often presided over by a retired High Court Judge). By its decision on 5th December 2013 not to entertain complaints against retired Judges, judiciary has further insulated itself from transparency and accountability to the aggrieved persons; similarly, in the case of K Veeraswamy (then Chief Justice of Madras High Court) Supreme Court ruled in 1991 that neither a First Information Report can be registered against a judge nor a criminal investigation be initiated against a judge without the prior consent of Chief Justice of Supreme Court; even a State Legislature cannot discuss the conduct of a Judge -- only the Parliament has the power to do so (*infra*).

The incidence of deplorably unethical conduct is alarmingly high amongst those judges who were selected by the Collegium, in comparison with the number of judges who were selected by the Central Government, e.g. the cases against Shamit Mukherjee (then a Delhi High Court Judge), AK Ganguly (a retired Supreme Court Judge) and Swatantra Kumar (then a Supreme Court Judge) -- it is not mere coincidence that these tainted Judges were rehabilitated by the Government in post-retiral '*kushi*' jobs in Commissions etc (*infra*).

It is not rare to find *fresh* law graduates being appointed to various Panels if they possess the additional qualification of being a judge's child.

'Impeachment' (the only existing provision for Disciplinary Action against a *sitting* Judge) was found to be practically *unworkable* in the case of V Ramaswamy (then a Supreme Court Judge) and he survived in office despite being found guilty on several serious charges of corruption by a statutory committee of three fellow judges -- this *rescue operation* was made possible by Members of the Congress (under Prime Minister PV Narasimha Rao) who abstained from voting due to a *whip* issued by

the 'party leadership' when the impeachment motion was put to vote in the Parliament in May 1993; Mr Sibal, let's recall, was Ramaswamy's Lawyer during these impeachment proceedings before the Parliament. After his retirement, the said ex-judge once brought three matters from Tamil Nadu for filing the same in Supreme Court; he stayed in Tamil Nadu's State Guest House in Delhi and telephoned Mr KS Chauhan (a Lawyer who shared the same Chamber in which the Author used to sit then) and asked the said lawyer to meet the former at the Guest House for settling the Fees *etc* in those matters. Was the ex-judge himself a Party in these matters, or was he a only legal adviser to the concerned Party/Parties, and what portion did the Lawyer get out of the total sum paid by the Litigants?

The number of exposures of judicial misconduct has been on the increase since the year 2007 -- not without reason (more about it later). Let us not forget that such instances bring into disrepute not only the concerned Judge but also the Judiciary as a whole -- Appendix-B to this Paper contains details of a Scandal that is being perpetrated in Uttar Pradesh at a scale which is much larger than the Employees' Provident Fund Scandal that occurred in Ghaziabad District Courts.

Moreso, contrary to the Fees prescribed under the Right to Information Act 2009 (usually Rs.10) for every Application, Allahabad High Court has whimsically enhanced the Fees *per Question* to a whopping Rs.500!

As per Indian Constitution, CJI officiates as President of Indian Republic when neither the President nor the Vice-President is available to discharge the *functions* of the President -- although the CJI *per se* is not accountable to the People of India [moreso, the Constitution is silent as to whether he can be impeached while officiating as such President or for the acts of Omission and Commission committed by him/ her while he/she officiates as President, or whether (s)he can hold *at one and the same time* two separate 'Public Offices' of President (on whose behalf all Executive Orders of the Government are passed) and also the Chief Justice (head of the 'independent' judiciary)]. Moreso, CJI administers the Oath of Office to the President to "*preserve, protect and defend the Constitution and the law*" but who administers the CJI this Constitutional Oath when (s)he is about to enter upon the Office of President; moreso, the Oath that she/he took as CJI is quite different because as a Judge he/she *interprets* (not 'defends') the Constitution ... The list of Unanswered Questions (where the Law is silent) goes on and on.

Incidentally, CJI did not have any Escort Jeep or Flag-car -- it was at the suggestion of the Author herein, during the tenure of **Shri** AM Ahmadi as CJI, that an Escort Jeep and a Flag-car were provided to the CJI; several suggestions made by the Author have been accepted and implemented by powers that be (*infra*).

If my use of 'Shri' surprises the audience, here is the Supreme (Constitutional) Law:

Article 18 of the Constitution of India **forbids** use of Titles (*prefixes*) before any Indian citizen's name, except in the case of *retired* Military Officers -- who are specifically permitted by the said Article to use their Last Rank as a Title before their Names; however, many Judges continue to use the Title 'Justice' before their Names *even after their retirement*, e.g. the Author of a book titled 'Constitution of Jammu & Kashmir: Its Development & Comments' (ISBN:9788175348899) is being shown on its cover as "Justice ..." (vide URL:<http://www.homeshop18.com/constitution-jammu-kashmir-its-development-comments-6th-edition/author:justice-anand/isbn:9788175348899/books/law/product:27220693/cid:10488/>).

The rationale underlying the use of Military Ranks is that those upon whom a 'Permanent Commission' is conferred by the President, are commissioned-for-life and may be called upon to serve, even after their retirement from active service, if the country needs them.

CJI also heads the Collegium (*infra*) which selects, for elevation to the post of a Judge of Supreme Court/High Court, ordinary law-graduates who have completed 10 years of Enrolment in legal profession (even if they have had only a handful of briefs) if they have paid more than a specified sum as Income-Tax for the previous 3 years (as we know, Tax>Returns can be easily manipulated on a higher

side)! There is no written examination, nor a *viva voce* for such 'elevation'. Moreso, Advocates Act 1961 places enrolled Advocates outside the administrative and disciplinary jurisdiction of Courts; as such, neither Supreme Court nor any High Court keeps Dossiers on Advocates. In the light of these Facts and the Law, what forms the basis for a Collegiums' selection of a Lawyer to the high & mighty post of a Judge? To put it differently, in the absence of reliable data on Lawyers, is the decision of the Collegium necessarily and always sound?

Let's take, for instance, an individual who fails to get admission into tougher streams like Engineering/Science/Economics/Commerce -- which require very high cut-off marks at the 10+2 stage; consequently, a lesser scorer joins BA (Pass) Course, sits for IAS (Prelim) Exams, but fails. Then he/she joins LL.B., gets enrolled as an Advocate, and after 10 years as Advocate (on paper) he/she is elevated as a High Court Judge through an entirely *non-transparent* process. On the other hand, the brilliant Science-student (from the best educational Institute) qualifies in the tough 3-stage IAS Examinations (Preliminary, Mains and Viva Voce) and, after more than 25 years of gruelling administrative experience (across the length and breadth of India) he/she becomes a Chief Secretary -- only to be summoned, in a PIL matter, by the aforesaid Judge (who has no administrative experience at all) to teach this much brighter 'public servant' than himself, the way to run a State!

PIL means 'Public Interest Litigation' -- a kind of Social Action Litigation by which the Petitioning Party is given access to Writ Courts although the Petitioner therein is not *directly aggrieved* by the State's action against which the Petition has been filed; and 'State' is defined in Article 12 of the Constitution -- the scope of this Article has been much widened through 'interpretations' assigned to it by Supreme Court/High Courts but, understandably, it fails to include the office of a judge.

We have witnessed a lot of double-speak between the Judiciary and the Executive on the issue of 'judicial independence' -- Judiciary, in fact, desires *independence* from the Government in deciding judicial officers' Conditions of Service (including their Selection, Transfer, Pay & Perks, etc) and they have themselves appointed retired Judges to certain Commissions etc. The conundrum is apparent from the fact that the same Executive appoints retired Judges to gubernatorial posts, and political parties offer them party-tickets to contest the Elections at Party's expense -- how can *servicing* judges remain ignorant of the **criteria** that habitual 'subservience' is used by the Government and Political Parties to bestow upon them such post-retiral 'freebies'? Nay, these are not at all free and do come attached with strings that extend back to the judge's service days -- especially what he/she did for the Government or that Party?

Moreso, despite having access to routine/special Reports of Intelligence Bureau and Central Bureau of Investigation, the Government prefers to appoint to certain Posts only such Judges as are known to be *pliable* -- even Commissions are appointed to dissipate-by-delay the public outcry on some events (e.g. Nirbhaya's matter in Delhi) and are filled up with 'loyal' Judges who would repay this favour by *belatedly* preparing a Report which the Government will dump when the public's interest in the matter subsides, or the Government will add to a deliberately *lukewarm* Report something that would convey the impression or perception that Government is concerned about the public's wishes even though the 'expert-advice' concedes much less than what the Public has asked for. During this while, the retired Judge enjoys the Perks that he/she has gotten used to, viz. a free bungalow, free telephone, subsidised electricity & water, peon, Pay and Allowances, and other staff -- including a 'law intern'!

Shouldn't such *inducements* (appointments and party-tickets) to *retired* Judges or Bureaucrats be stopped, especially when that judge/bureaucrat is in receipt of a pension? If legal competence is a Qualifying Requirements (QR) for a Post, then younger persons who *meet* the basic QRs for judgeship can be appointed?

The Principle of 'independence' of Adjudicator from the Adjudicatee is surprisingly overlooked when criminal cases against MPs are tried by those very judicial officers whose Impeachment Proceedings are decided upon by these very MPs! Shouldn't there be a separate Judicial Forum to try

cases against MPs, and why must this Forum not be placed under the joint supervision of Speaker of Lok Sabha, Chairperson of Rajya Sabha and a *watch dog* Committee comprising of those Parliamentarians whose financial & intellectual integrity is cited as an example, instead of the said Forum being placed under Supreme Court?

The aim of separation of Judiciary from the Government is espoused in the hope that it may lead to expeditious, impartial and affordable Justice Delivery System. But unfortunately the same Executive pays (out of Tax-Payers' moneys) *hefty* Fees to its Lawyers; moreso, these lawyers are rewarded if they succeed in delaying reliefs that are prayed for against the Government, or for obtaining favourable Orders for the Government -- by hook or by crook. At least 30-40% of the voluptuous 'arrears' of cases pending in Courts will be disposed of (cleared) if the Executive's lawyers *assist* the Courts in dispensing Justice, rather than *mislead* the Courts into causing a miscarriage of Justice against the poor citizens.

Certain Standing Counsels and office-bearers of Bar Associations/Councils try to overawe some of the judges who have tread the same route in the past, viz.: An ordinary Advocate => election to a Bar Association => appointment as Standing Counsel => elevation to a Judge -- fruits of being a blue-eyed boy/girl of an influential politician or judge.

Let us now examine the role of the Legislative (Law-makers).

Members of Parliament are elected either directly to Lok Sabha, or indirectly (through certain Elected Representatives) to Rajya Sabha; in addition, the latter includes Nominated Members. Laws are supposed to be debated and then passed by Members in both the Houses of Parliament and, thereafter, assented to by the President of Indian Republic. But many Bills are, in fact, passed without any debate or discussion!

These Members are elected either on the basis of their personal popularity or on account of Electorate's perception about the Political Party that fields them as its Candidates for the Elections. The Electorate can reject any Candidate or all the Candidates but, at present, there is no provision to recall a Candidate once he/she is elected.

On the other hand, for the past several years Judges are being selected by a Collegium of 5 senior most Judges of the Supreme Court; moreso, under the guise of 'interpreting' the Constitution, Supreme Court has transgressed the Constitution by arbitrarily depriving the President of Indian Republic the *power to reject* any of the Candidates recommended by the said Collegium -- though our Constitution cannot be amended even by half the 'elected members' of the 543-member strong Lok Sabha, yet merely 5 Judges (Constitution Bench) of the Supreme Court have transgressed the Constitution in the case of Judges' Appointment. And there is no right to recall any Judge, except through a laborious process of 'impeachment' (*supra*) before the Parliament (the latter comprises of a number of tainted Members against whom criminal cases are pending before Courts presided over either by the same Judges or by judicial officers subordinate to these Judges, or by their ilk; moreso, 'impeachment' is reviewable by impeached Judge's own brethren who sit in the Supreme Court). Neither Parliament nor the President has even whimpered against it.

Executive (Government)

Let us now examine whether Governments necessarily act rationally. Consider the following Item from Indian Union Budget 2013-14:

"5 to 10 per cent surcharge on *domestic* companies whose taxable income exceeds Rs 10 crore".

Is this surcharge based on sound Economic Principles, or does it defeat the Principle of 'economies-of-scale'? How does this surcharge further the vision of 'socialistic pattern' of Society? How does it prevent 'concentration of wealth', especially when the same Government allows a large Company to split itself into two Companies (though *both remain under the same Management*) to evade such taxation and/or to escape certain labour laws?

On the other hand, higher corporate incomes will hold the potential of attracting more number of Shareholders -- thereby, *diversifying* the Ownership amongst a larger number of persons and also bring incomes to more number of people. Moreso, a flat rate of Income Tax will encourage better performance by Companies. Going a step further, why levy an Income-Tax or Service-Tax at all when you are already charging Value Added Tax on goods and services purchased by these income-earners (including Teachers)?

Why is a business entity defined differently in various Labour Laws? Why can't various Labour Laws be integrated into a single Act that will be implemented through a single Authority? At present, there are so many Acts that even the Law Minister would have lost a count thereof. In any case, the Courts seem to have lost the count; for example:

After the old Criminal Procedure Code was revised in 1971, the Delhi High Court surprisingly held that the provisions of Criminal Law Amendment Acts that were enacted from time to time to amend the old Code (these provisions were either explicitly incorporated into the new Code or were impliedly discarded while codifying the new Code) continued to amend the new Code, too, notwithstanding the fact that the precise Object of enacting the new Code was to rationalise the pre-existing Laws and integrate & codify the same into a new statute! The said Judgment was discarded only when the Author herein pointed out the fallacy of that earlier decision.

Similarly, a *local* Notification (issued by *local* Executive Authority in Delhi under British *colonial* Government) was allowed to exist for more than 50 YEARS in the post-Independence era whereas the Indian Constitution does not permit even an Ordinance proclaimed (at the behest of Central Government) by the President of India to operate for a period longer than 6 MONTHS, i.e. until the next Session of Parliament. It was during the challenge to the said Notification that the aforesaid Order declaring the petitioner therein as dead, was obtained by the Executive from Supreme Court.

Corporate Governance

The various types of Stake-holders in a Company are: its shareholders, management, employees, suppliers, financiers [Banks, Financial Institutions, holders of Secondary Financial Instruments (*supra*) etc], customers, government and the community at large. And Corporate governance essentially involves balancing the interests of various types of Stakeholders in a Company. It is a system of rules, practices and processes by which a Company is *directed*, *controlled* and *monitored* with the help of Reports>Returns submitted by the Company (*corporate disclosure*) and its Auditors (usually Chartered Accountants) and statutory Inspectors appointed under various Acts, etc. Since Corporate governance also provides the framework for attaining a company's objectives, it encompasses practically every sphere of management -- from action plans and internal controls to performance measurement and corporate social responsibility.

Corporate governance became a pressing issue after the introduction of **Sarbanes-Oxley Act** 2002 in USA -- this was enacted to restore public's confidence in Companies and Financial Markets after **Accounting Frauds** bankrupted high-profile Companies such as **Enron** and **WorldCom**. Similar scandals in India (e.g. **Satyam Computer Services**) were also enabled by the collusion of unethical Auditors (e.g. PricewaterhouseCoopers) with the Management. Companies Act 2013 now mandates, inter alia, compulsory rotation of statutory Auditors, appointment of 'independent' (unrelated to company) Directors, etc.

Corporate governance aims at minimising the loss of value that results from the separation of ownership from control. And it deals with the ways in which suppliers of finance to Corporations might assure themselves of not only a return on their investment but also the very safety of their investment.

Most companies strive to have a high level of corporate governance. These days, it is not enough for a company to be merely **profitable**, it also needs to demonstrate good **corporate citizenship** through **environmental awareness**, **ethical behavior** and **good corporate-governance practices**.

Good Corporate Governance Practices include:

- ❖ All types of Stakeholders (*supra*) should be **involved** in corporate governance.
- ❖ The Board of Directors should be **monitored** and held **accountable** for what guidance they give to the Company's *professional* Managers, and how they protect the shareholders' interests.
- ❖ **Disclosure** and **transparency** is a critical ingredient of good governance.
- ❖ The corporate governance framework should not only protect **shareholders' rights** but also ensure **equitable treatment of all shareholders**.

Some of the reputed Companies, especially in the Telecom Sector, are using unethical practices like sharing/selling Subscribers' Mobile Numbers with Call Centres, thrusting upon the technologically non-savvy Subscribers unwanted 'Value Added Services' by sending them SMSs with a single Option button (viz. 'OK'), SPAM Messages or calls by Call Centres even to Mobile Numbers that are registered with the 'DND-Registry) etc.

During Author's field research in Pune, he found an unusually high rate of employee turn-over in Bajaj Auto's Research & Development Department -- none, except the Head of Department himself, had a service longer than 2 years in that Company. And it was also found that the overhead expenses in TELCO were, at least, 15% on the higher side. Moreso, a Question put to a Candidate for the post of Registrar in Tata Institute of Social Sciences (Mumbai) was "Which is the longest Order in the Code of Civil Procedure?" whereas the candidate had already stated that he was practising in Supreme Court and the *procedure* applicable to that Court was prescribed by Supreme Court Rules 1966, and not by the Code of Civil Procedure -- which is a *procedure* for District Courts.

Conclusion

From a practical point of view, Corporate governance in India is a complex task involving, amongst others, the use of bribes (including wine, wealth and women) to bureaucrats and their political 'bosses', buying peace with regional armed outfits like Naxals or ULFA, finding loopholes in Law, hoodwinking the Courts, etc. For example, even after 3 years neither the High Court nor Supreme Court has succeeded in forcing Sahara to refund Rs.19,000 crores that were collected by the Group from its investors. These are turbulent times, and those adept in fishing in troubled waters do find themselves as the fittest to survive.

The usual modus operandi adopted by some large Companies is to withhold payment of a huge Amount of Tax (owed to the Government), file a case in a Court (Lawyers' Fees, Court Fees and other expenses do not exceed 1-2% of the Amount so withheld), then delay the case for years and, in the meanwhile, use the said Amount as a 'roll-over investment' per production-cycle of the Company or make similar investment in its subsidiaries (instead of borrowing from Banks @ 14.5% per annum, or more) -- because Supreme Court would not ask the Company to pay more than 9% simple interest per annum on the withheld amount, even if the Company ultimately loses its case.

In suitable cases, Company Law Board may be vested with the power to order pre-audit, surprise audit, audit by a Team of Cost & Works Accountants or even Social Audit etc in order to keep the Corporates not only law-abiding but also efficient.

Moreso, there is urgent need to force MNC's to provide Service-Centres within India and also to deposit with every High Court certain sum out of which 'compensation' awarded to its 'consumers' can be paid if the said MNC has no Indian Representative who can be jailed in case of default by the MNC to pay the decreed sum.

No individual should be allowed to be on the Board of Directors for more than two Companies at the same time, but our Laws must also be rationalised in order to obviate the need for splitting a Company.

A new format of Company (namely, **People's Company**) is proposed in Appendix-A.

NOTES

¹Under the Act, only Company's assets (including the saleable value of Equity) can be forfeited in any Civil Suit between the Company and its Creditors because Owners' liability is *limited* to the value of their Shares.

APPENDIX-A**VILLAGERS AS 'PARTNERS': A HUMANE ALTERNATIVE TO 'ACQUISITION' (FORCIBLE DISPOSSESSION) AND DISPLACEMENT OF VILLAGER'S FROM THEIR LANDS**

Instead of acquiring Lands of affected Villagers, these Villagers themselves will be made 'Bhagidars' (Partners) by converting their Land-Value into 'Monetary Shares' in a legally incorporated Company or a registered Cooperative (as appropriate) -- thus, they shall continue to have 'malikana-haq' (ownership rights) over the assessed *nett* value of their lands. This assessment will be based on the value of the agricultural produce obtained from the acquired piece of land during the last twenty-five years (in case of a residence, the market-value of residential land in that village or in adjoining villages) *minus* the cost of all inputs (including the monetary value of labour put in by Members of the land-owning Family, itself). In addition, the villager shall be assured a minimum annual ROI (return on investment) which is, at least, equal to the aforesaid Nett Value *divided by 25* -- for purposes of Taxation, this income shall continue to be treated as 'agricultural income' and, thus, exempted from Income-Tax.

In addition, in the case of acquisition of residential property, the villager shall have the option either to accept the above settlement or, in the alternative, receive allotment of a *pre-defined* 'Model House' [which must be built, within 3 months of the villager's displacement, by the Panchayat/ Block Development Officer under the NAREGA (Mahatma Gandhi National Rural Employment Guarantee Act) scheme] -- the plinth area and architectural design for such houses shall be pre-decided by the Panchayat or Block Development Officer (BDO) for 3-4 Categories of persons displaced (depending upon the size, construction-material and fittings of the house that was *acquired*). Preferably, all these actions should be planned with the help of PERT-Chart in such a way that the said 'Options' are taken *before-hand*, and the affected Villager is given the house on the same very day on which he hands over his/ her acquired-house to the Panchayat/ BDO.

Moreso, these Shares must be 'transferable' within the 'natural' Family (spouse, children & parents) of the person to whom the same were allotted by the State (Government) or Panchayat/ BDO -- by a simple legal Deed called 'Family Settlement' which does not require payment of any Stamp-Duty etc. However, to check mal-practices, every such Deed must be *registered* under the Registration Act, on payment of a flat and *nominal* Registration-Fees of Rs.100.00; in addition, the Deed must have a Genealogy-Chart showing all the Members of that particular Family-Unit (whether or not they are beneficiaries under this Deed). Moreso, non-inclusion of any bona fide Family-Member in this Chart, shall amount to 'fraud' in Law -- with all its legal consequences (e.g. the Deed shall become 'void' *ab initio*). Photographs of all persons mentioned in the aforesaid Chart, must also be affixed to the said Deed, and the existing legal Owner of these Shares as well as all the beneficiaries under the aforesaid Deed, shall sign this Deed before the Registration Authority -- preferably, it should also be signed by all other Members in the said Chart so that they are precluded from raising any objection to this Deed, in future. *It shall, however, be the personal responsibility of Registration Authority to ensure that interests of minors (such Members of this Family as are below 18 years of age) are fully safeguarded.* Besides, every Member shall be identified to the Registration Authority by at least two 'independent' Witnesses who shall also sign (to this effect) on this Deed, in the presence of the said Authority.

These Shares may be transferred to those who were not the original beneficiaries but are Members of the same Family, or be taken back by the State -- under Court Orders (e.g. on Ownership disputes, or in case of Fraud etc) *after* giving a reasonable opportunity to the affected Share-holder(s) and also to the concerned Panchayat/ BDO, to be heard. In exceptional cases [to be defined by Rules made by the State in consultation with an Apex representative body, at the National level, of all Panchayats and Gram-

Sabhas (Village Councils)] and *with the prior written permission* of Panchayat/ BDO, these Shares may also be allowed to be transferred to 3rd Parties, by the Share-holders themselves.

These Shares shall also be acceptable as Security for drawing loans from the Banks.

With regard to small and uneconomical land-holdings, the Villager may be given a choice to *sell* his/ her land to the *aforsaid* Company/ Cooperative. The interests of 'ryots' who had been tilling the acquired land for 3 years immediately preceding the aforesaid acquisition etc, must also be safeguarded by way of affording them an opportunity for alternative gainful employment in occupations that will be generated in the Urban Village -- if so required, they shall be given a short-duration training in new skills (free of cost) by the State *before* the concerned land is acquired (a PERT-Chart will facilitate proper planning of all these activities and their sequential implementation).

Advantages to the Villagers:

- i) Freedom from frequent floods and the consequent loss of lives, homes, hearths, assets and income;
- ii) Freedom from temporary *displacement* from one's house during floods caused by heavy rains;
- iii) Assured income per annum that is no longer dependent upon the vagaries of monsoon -- moreso, it comes without expending any physical effort on the part of the Villager in a Farm/ Field;
- iv) More and better *local* jobs that will be created under this Project -- leading to reduction in mass-migration to far-flung urban areas and, thereby, lessening the pressure upon means of long-distance transportation;
- v) Savings in the funds allotted for NAREGA -- except in initial stages when construction of houses, reservoirs, dams etc (*supra*) will be undertaken and completed in a planned and well-coordinated manner;
- vi) The Villager is free to work for gain in any project, scheme or industry for which his newly acquired skills, education and health (physical, mental & emotional) are found suitable -- but *without reducing the aforesaid ROI*;
- vii) Better educational, health, recreational and communication facilities at a lower cost -- these will be an integral part of the Project and shall be sustainable with funds generated from these facilities themselves;
- viii) Better and cheaper infrastructural facilities, viz. roads, transportation, marketing (including e-Commerce), telecommunications, email, e-Governance, and free access to Archived Digital Data on agricultural methods/ inputs/ costs, quality of local soil, land-use, weather conditions, prevailing prices for marketable agricultural and other products produced in the Urban Village, online refresher courses and adult-education, online presentations on health & hygiene, disaster-management, etc;
- ix) Planned, integrated and synergistic use of NAREGA-funds and the *discretionary* 'developmental Grants' available with Members of Parliament and State Legislatures (MPs & MLAs) towards overall development of 'The Urban Village', especially on such projects as are related to 'Free IT-Access to Rural Masses';
- x) Inclusive development, and higher Quality of Life for the Villager -- leading to a shift of elderly and retired persons from Cities/ Townships to The Urban Village; thereby, reducing pressure on urban-housing.

Growth of Peoples' Wealth through Peoples' Companies

Peoples' collective wealth must be utilised for the Peoples' Companies and Peoples' Trusts, instead of being invested in the so-called 'public' companies that cater to private (not public) interests or in the so-called 'Charitable Trusts' that are a mere facade to self-serving groups (e.g. educational Institutes run by some such Trusts for the grant of MBA/ LLB degrees). On the other hand, Peoples' Companies will, although professionally managed through qualified 'hired Managers', will serve the interests of the

Community -- emphasising continual improvement in Quality and Service, while lowering commodity prices; moreso, these Companies will also treat fairly their Human Resources. And the chances of liquidation of such companies will also be minimal. Instead of 'Tax-Free Industrial Zones' concept, a new experiment in simplified and integrated Taxation, Industrial, Company, HR-Training and Law & Order 'Statutes-cum-Systems' ought to be undertaken.

APPENDIX-B

UTTAR PRADESH JUDICIAL AFFIDAVITS (AFFIXING OF COUPONS BY OATH-COMMISSIONERS) SCANDAL

This unusual practice involves many times more funds than those involved in EPF-scandal in Ghaziabad Courts. Under the Notaries Act 1952 passed by Parliament, the Central Government has statutorily fixed (vide Notaries Rules 1956) the Notaries Fees as Rs.20/- for 'attesting' any Affidavit. However, on all Affidavits filed in judicial proceedings in Uttar Pradesh, a Coupon is required to be affixed by the Oath Commissioner -- the Cash Section of High Court of Allahabad sells these Coupons @ Rs.30.50 each, and every Oath Commissioner affixes these Coupons on affidavits attested by him/her because the Registry of High Court and District Courts refuses to take on record any Affidavit on which the said Coupon is not affixed. In addition, a Court Fees Stamp is also to be affixed -- these stamps are often sold in black even within the premises of the Courts on the ground that the Administrative Authorities in the Courts charge the Stamp Vendors electricity & other charges.

The proceeds of these Coupons are shared amongst the following:

- i) All Oath Commissioners appointed in the concerned High Court Bench or the concerned District Court;
- ii) The concerned Bar Association -- whether registered or not;

It is pertinent to mention that a number of employees of the concerned Court are also appointed as Oath Commissioners, by rotation; however, they do not 'attest' any Affidavit -- they only share the 'booty' (proceeds of the Coupons). Similarly, a few persons who are not employed in the said Court, are also appointed as Oath Commissioner just to share the said booty.

The proceeds from the sale of these Coupons in all Courts in Uttar Pradesh put together runs into several lakhs per diem; though these **non-public funds** are being operated through the Court's Cash Section, yet approval of the CJI has not yet been taken for maintaining these *unaudited* non-public funds (not audited by Comptroller and Auditor General of India). Moreso, the Conditions of Service [i.e. CCS (CCA) Rules 1965] prohibit Government Employees from obtaining anything over and above their statutorily fixed Pay & Allowances, especially for a duty that is not even performed by them. And the Rules of High Court of Allahabad are neither assented to by Indian President -- to the extent these conflict with CCS (CCA) Rules, nor does any provision of High Court Rules confer upon the High Court the power to levy 'taxes' through the said Coupons.

In addition, the Advocates employed as Oath Commissioners are charging more than Rs.50/- per Affidavit (instead of the statutorily fixed amount of Rs.20/-) on the ground that the proceeds of the aforesaid Coupons are being shared amongst all the Oath Commissioners on High Court's and District Courts' rolls as well as by certain Members of the High Court's Staff WHEREAS the 'attesting' (practising) Oath commissioners have to sit in the court-premises the whole day long and also pay from their pockets, in advance, for the purchase of these Coupons.

It is not transparent as to whose pocket(s) the huge amount of 'interest' earned on this fund (the amount earned from Sale of Coupons is not disbursed amongst the 'beneficiaries' by the Cash Section on a daily basis) and, in the absence of audit by the CAG or the placement of the same before Parliament's Public Accounts Committee, runs the potential risk of being misappropriated.
